



General Assembly

## ***Amendment***

***February Session, 2018***

**LCO No. 5875**



Offered by:  
SEN. FLEXER, 29<sup>th</sup> Dist.

To: House Bill No. **5293**

File No. 671

Cal. No. 497

(As Amended by House Amendment Schedule "A")

### ***"AN ACT CONCERNING THE SALE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS AND VAPOR PRODUCTS."***

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 12-286a of the general statutes is  
4 repealed and the following is substituted in lieu thereof (*Effective*  
5 *October 1, 2018*):

6 (a) Each distributor and each dealer, as defined in section 12-285,  
7 shall place and maintain in legible condition at each point of sale of  
8 cigarettes to consumers, including the front of each vending machine,  
9 and each restricted cigarette vending machine a notice which states (1)  
10 that the sale, giving or delivering of tobacco products, including  
11 cigarettes, to any person under [eighteen] twenty-one years of age,  
12 except a person described in subsection (g) of section 53-344, as  
13 amended by this act, is prohibited by section 53-344, as amended by  
14 this act, (2) the purchase or misrepresentation of age by a person under  
15 [eighteen] twenty-one years of age, except a person described in

16 subsection (g) of section 53-344, as amended by this act, to purchase  
17 cigarettes or tobacco products is prohibited by said section 53-344, and  
18 (3) the penalties and fines for violating said section 53-344 and section  
19 12-295a.

20 Sec. 502. Subsection (a) of section 12-295 of the general statutes is  
21 repealed and the following is substituted in lieu thereof (*Effective*  
22 *October 1, 2018*):

23 (a) The commissioner may suspend or revoke the license of any  
24 dealer or distributor for failure to comply with any provision of this  
25 chapter or regulations related thereto or for the sale or delivery of  
26 tobacco in any form to a [minor under eighteen] person under twenty-  
27 one years of age, except a person described in subsection (g) of section  
28 53-344, as amended by this act, following a hearing with respect to  
29 which notice in writing, specifying the time and place of such hearing  
30 and requiring such dealer or distributor to show cause why such  
31 license should not be revoked, is mailed or delivered to such dealer or  
32 distributor not less than ten days preceding the date of such hearing.  
33 Such notice may be served personally or by registered or certified mail.

34 Sec. 503. Section 53-344 of the 2018 supplement to the general  
35 statutes is repealed and the following is substituted in lieu thereof  
36 (*Effective October 1, 2018*):

37 (a) As used in this section:

38 (1) "Cardholder" means any person who presents a driver's license  
39 or an identity card to a seller or seller's agent or employee, to purchase  
40 or receive tobacco from such seller or seller's agent or employee;

41 (2) "Identity card" means an identification card issued in accordance  
42 with the provisions of section 1-1h;

43 (3) "Transaction scan" means the process by which a seller or seller's  
44 agent or employee checks, by means of a transaction scan device, the  
45 validity of a driver's license or an identity card; and

46 (4) "Transaction scan device" means any commercial device or  
47 combination of devices used at a point of sale that is capable of  
48 deciphering in an electronically readable format the information  
49 encoded on the magnetic strip or bar code of a driver's license or an  
50 identity card.

51 (b) Any person who sells, gives or delivers to any person under  
52 [eighteen] twenty-one years of age tobacco shall be fined not more  
53 than two hundred dollars for the first offense, not more than three  
54 hundred fifty dollars for a second offense within a twenty-four-month  
55 period and not more than five hundred dollars for each subsequent  
56 offense within a twenty-four-month period. The provisions of this  
57 subsection shall not apply to a person under [eighteen] twenty-one  
58 years of age who is delivering or accepting delivery of tobacco (1) in  
59 such person's capacity as an employee, or (2) as part of a scientific  
60 study being conducted by an organization for the purpose of medical  
61 research to further efforts in tobacco use prevention and cessation,  
62 provided such medical research has been approved by the  
63 organization's institutional review board, as defined in section 21a-408.

64 (c) Any person under [eighteen] twenty-one years of age who  
65 purchases or misrepresents such person's age to purchase tobacco in  
66 any form or possesses tobacco in any form in any public place shall be  
67 fined not more than fifty dollars for the first offense and not less than  
68 fifty dollars or more than one hundred dollars for each subsequent  
69 offense. For purposes of this subsection, "public place" means any area  
70 that is used or held out for use by the public whether owned or  
71 operated by public or private interests.

72 (d) (1) A seller or seller's agent or employee may perform a  
73 transaction scan to check the validity of a driver's license or identity  
74 card presented by a cardholder as a condition for selling, giving away  
75 or otherwise distributing tobacco to the cardholder.

76 (2) If the information deciphered by the transaction scan performed  
77 under subdivision (1) of this subsection fails to match the information

78 printed on the driver's license or identity card presented by the  
79 cardholder, or if the transaction scan indicates that the information so  
80 printed is false or fraudulent, neither the seller nor any seller's agent or  
81 employee shall sell, give away or otherwise distribute any tobacco to  
82 the cardholder.

83 (3) Subdivision (1) of this subsection does not preclude a seller or  
84 seller's agent or employee from using a transaction scan device to  
85 check the validity of a document other than a driver's license or an  
86 identity card, if the document includes a bar code or magnetic strip  
87 that may be scanned by the device, as a condition for selling, giving  
88 away or otherwise distributing tobacco to the person presenting the  
89 document.

90 (e) (1) No seller or seller's agent or employee shall electronically or  
91 mechanically record or maintain any information derived from a  
92 transaction scan, except the following: (A) The name and date of birth  
93 of the person listed on the driver's license or identity card presented by  
94 a cardholder; (B) the expiration date and identification number of the  
95 driver's license or identity card presented by a cardholder.

96 (2) No seller or seller's agent or employee shall use a transaction  
97 scan device for a purpose other than the purposes specified in  
98 subsection (e) of section 53-344b, as amended by this act, subsection (d)  
99 of this section or subsection (c) of section 30-86.

100 (3) No seller or seller's agent or employee shall sell or otherwise  
101 disseminate the information derived from a transaction scan to any  
102 third party, including, but not limited to, selling or otherwise  
103 disseminating that information for any marketing, advertising or  
104 promotional activities, but a seller or seller's agent or employee may  
105 release that information pursuant to a court order.

106 (4) Nothing in subsection (d) of this section or this subsection  
107 relieves a seller or seller's agent or employee of any responsibility to  
108 comply with any other applicable state or federal laws or rules  
109 governing the sale, giving away or other distribution of tobacco.

110 (5) Any person who violates this subsection shall be subject to a civil  
111 penalty of not more than one thousand dollars.

112 (f) (1) In any prosecution of a seller or seller's agent or employee for  
113 a violation of subsection (b) of this section, it shall be an affirmative  
114 defense that all of the following occurred: (A) A cardholder attempting  
115 to purchase or receive tobacco presented a driver's license or an  
116 identity card; (B) a transaction scan of the driver's license or identity  
117 card that the cardholder presented indicated that the license or card  
118 was valid; and (C) the tobacco was sold, given away or otherwise  
119 distributed to the cardholder in reasonable reliance upon the  
120 identification presented and the completed transaction scan.

121 (2) In determining whether a seller or seller's agent or employee has  
122 proven the affirmative defense provided by subdivision (1) of this  
123 section, the trier of fact in such prosecution shall consider that  
124 reasonable reliance upon the identification presented and the  
125 completed transaction scan may require a seller or seller's agent or  
126 employee to exercise reasonable diligence and that the use of a  
127 transaction scan device does not excuse a seller or seller's agent or  
128 employee from exercising such reasonable diligence to determine the  
129 following: (A) Whether a person to whom the seller or seller's agent or  
130 employee sells, gives away or otherwise distributes tobacco is  
131 [eighteen] twenty-one years of age or older; and (B) whether the  
132 description and picture appearing on the driver's license or identity  
133 card presented by a cardholder is that of the cardholder.

134 (g) Notwithstanding the provisions of subsections (b) to (f),  
135 inclusive, of this section, any person who is eighteen years of age or  
136 older prior to October 1, 2018, may purchase and possess tobacco  
137 products in any form.

138 Sec. 504. Section 53-344b of the 2018 supplement to the general  
139 statutes is repealed and the following is substituted in lieu thereof  
140 (*Effective October 1, 2018*):

141 (a) As used in this section and sections 21a-415 and 21a-415a:

142 (1) "Electronic nicotine delivery system" means an electronic device  
143 that may be used to simulate smoking in the delivery of nicotine or  
144 other substance to a person inhaling from the device, and includes, but  
145 is not limited to, an electronic cigarette, electronic cigar, electronic  
146 cigarillo, electronic pipe or electronic hookah and any related device  
147 and any cartridge, electronic cigarette liquid or other component of  
148 such device;

149 (2) "Cardholder" means any person who presents a driver's license  
150 or an identity card to a seller or seller's agent or employee, to purchase  
151 or receive an electronic nicotine delivery system or vapor product from  
152 such seller or seller's agent or employee;

153 (3) "Identity card" means an identification card issued in accordance  
154 with the provisions of section 1-1h;

155 (4) "Transaction scan" means the process by which a seller or seller's  
156 agent or employee checks, by means of a transaction scan device, the  
157 validity of a driver's license or an identity card;

158 (5) "Transaction scan device" means any commercial device or  
159 combination of devices used at a point of sale that is capable of  
160 deciphering in an electronically readable format the information  
161 encoded on the magnetic strip or bar code of a driver's license or an  
162 identity card;

163 (6) "Sale" or "sell" means an act done intentionally by any person,  
164 whether done as principal, proprietor, agent, servant or employee, of  
165 transferring, or offering or attempting to transfer, for consideration, an  
166 electronic nicotine delivery system or vapor product, including  
167 bartering or exchanging, or offering to barter or exchange, an  
168 electronic nicotine delivery system or vapor product;

169 (7) "Give" or "giving" means an act done intentionally by any  
170 person, whether done as principal, proprietor, agent, servant or  
171 employee, of transferring, or offering or attempting to transfer,  
172 without consideration, an electronic nicotine delivery system or vapor

173 product;

174 (8) "Deliver" or "delivering" means an act done intentionally by any  
175 person, whether as principal, proprietor, agent, servant or employee,  
176 of transferring, or offering or attempting to transfer, physical  
177 possession or control of an electronic nicotine delivery system or vapor  
178 product;

179 (9) "Vapor product" means any product that employs a heating  
180 element, power source, electronic circuit or other electronic, chemical  
181 or mechanical means, regardless of shape or size, to produce a vapor  
182 that may or may not include nicotine, that is inhaled by the user of  
183 such product; and

184 (10) "Electronic cigarette liquid" means a liquid that, when used in  
185 an electronic nicotine delivery system or vapor product, produces a  
186 vapor that may or may not include nicotine and is inhaled by the user  
187 of such electronic nicotine delivery system or vapor product.

188 (b) Any person who sells, gives or delivers to any person under  
189 [eighteen] twenty-one years of age an electronic nicotine delivery  
190 system or vapor product in any form shall be fined not more than two  
191 hundred dollars for the first offense, not more than three hundred fifty  
192 dollars for a second offense within a twenty-four-month period and  
193 not more than five hundred dollars for each subsequent offense within  
194 a twenty-four-month period. The provisions of this subsection shall  
195 not apply to a person under [eighteen] twenty-one years of age who is  
196 delivering or accepting delivery of an electronic nicotine delivery  
197 system or vapor product (1) in such person's capacity as an employee,  
198 or (2) as part of a scientific study being conducted by an organization  
199 for the purpose of medical research to further efforts in tobacco use  
200 prevention and cessation, provided such medical research has been  
201 approved by the organization's institutional review board, as defined  
202 in section 21a-408.

203 (c) Any person under [eighteen] twenty-one years of age who  
204 purchases or misrepresents such person's age to purchase an electronic

205 nicotine delivery system or vapor product in any form or possesses an  
206 electronic nicotine delivery system or vapor product in any form in  
207 any public place shall be fined not more than fifty dollars for the first  
208 offense and not less than fifty dollars or more than one hundred  
209 dollars for each subsequent offense. For purposes of this subsection  
210 "public place" means any area that is used or held out for use by the  
211 public whether owned or operated by public or private interests.

212 (d) (1) A seller or seller's agent or employee may perform a  
213 transaction scan to check the validity of a driver's license or identity  
214 card presented by a cardholder as a condition for selling, giving or  
215 otherwise delivering an electronic nicotine delivery system or vapor  
216 product to the cardholder.

217 (2) If the information deciphered by the transaction scan performed  
218 under subdivision (1) of this subsection fails to match the information  
219 printed on the driver's license or identity card presented by the  
220 cardholder, or if the transaction scan indicates that the information so  
221 printed is false or fraudulent, neither the seller nor any seller's agent or  
222 employee shall sell, give or otherwise deliver any electronic nicotine  
223 delivery system or vapor product to the cardholder.

224 (3) Subdivision (1) of this subsection does not preclude a seller or  
225 seller's agent or employee from using a transaction scan device to  
226 check the validity of a document other than a driver's license or an  
227 identity card, if the document includes a bar code or magnetic strip  
228 that may be scanned by the device, as a condition for selling, giving or  
229 otherwise delivering an electronic nicotine delivery system or vapor  
230 product to the person presenting the document.

231 (e) (1) No seller or seller's agent or employee shall electronically or  
232 mechanically record or maintain any information derived from a  
233 transaction scan, except the following: (A) The name and date of birth  
234 of the person listed on the driver's license or identity card presented by  
235 a cardholder; and (B) the expiration date and identification number of  
236 the driver's license or identity card presented by a cardholder.



237 (2) No seller or seller's agent or employee shall use a transaction  
238 scan device for a purpose other than the purposes specified in  
239 subsection (d) of this section, subsection (d) of section 53-344, as  
240 amended by this act, or subsection (c) of section 30-86.

241 (3) No seller or seller's agent or employee shall sell or otherwise  
242 disseminate the information derived from a transaction scan to any  
243 third party, including, but not limited to, selling or otherwise  
244 disseminating that information for any marketing, advertising or  
245 promotional activities, but a seller or seller's agent or employee may  
246 release that information pursuant to a court order.

247 (4) Nothing in subsection (d) of this section or this subsection  
248 relieves a seller or seller's agent or employee of any responsibility to  
249 comply with any other applicable state or federal laws or rules  
250 governing selling, giving or otherwise delivering electronic nicotine  
251 delivery systems or vapor products.

252 (5) Any person who violates this subsection shall be subject to a civil  
253 penalty of not more than one thousand dollars.

254 (f) (1) In any prosecution of a seller or seller's agent or employee for  
255 a violation of subsection (b) of this section, it shall be an affirmative  
256 defense that all of the following occurred: (A) A cardholder attempting  
257 to purchase or receive an electronic nicotine delivery system or vapor  
258 product presented a driver's license or an identity card; (B) a  
259 transaction scan of the driver's license or identity card that the  
260 cardholder presented indicated that the license or card was valid; and  
261 (C) the electronic nicotine delivery system or vapor product was sold,  
262 given or otherwise delivered to the cardholder in reasonable reliance  
263 upon the identification presented and the completed transaction scan.

264 (2) In determining whether a seller or seller's agent or employee has  
265 proven the affirmative defense provided by subdivision (1) of this  
266 section, the trier of fact in such prosecution shall consider that  
267 reasonable reliance upon the identification presented and the  
268 completed transaction scan may require a seller or seller's agent or

269 employee to exercise reasonable diligence and that the use of a  
 270 transaction scan device does not excuse a seller or seller's agent or  
 271 employee from exercising such reasonable diligence to determine the  
 272 following: (A) Whether a person to whom the seller or seller's agent or  
 273 employee sells, gives or otherwise delivers an electronic nicotine  
 274 delivery system or vapor product is [eighteen] twenty-one years of age  
 275 or older; and (B) whether the description and picture appearing on the  
 276 driver's license or identity card presented by a cardholder is that of the  
 277 cardholder.

278 (g) Each seller of electronic nicotine delivery systems or vapor  
 279 products or such seller's agent or employee shall require a person who  
 280 is purchasing or attempting to purchase an electronic nicotine delivery  
 281 system or vapor product, whose age is in question, to exhibit proper  
 282 proof of age. If a person fails to provide such proof of age, such seller  
 283 or seller's agent or employee shall not sell an electronic nicotine  
 284 delivery system or vapor product to the person. As used in this  
 285 subsection, "proper proof" means a motor vehicle operator's license, a  
 286 valid passport or an identity card issued in accordance with the  
 287 provisions of section 1-1h.

288 (h) Notwithstanding the provisions of subsections (b) to (f),  
 289 inclusive, of this section, any person who is eighteen years of age or  
 290 older prior to October 1, 2018, may purchase and possess an electronic  
 291 nicotine delivery system or vapor product."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	October 1, 2018	12-286a(a)
Sec. 502	October 1, 2018	12-295(a)
Sec. 503	October 1, 2018	53-344
Sec. 504	October 1, 2018	53-344b